IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2732 of 2007

Arvind K. Pandya — Applicant
Vs.
The State of Maharashtra & anr. — Respondents

Mr.U.S.Rao for applicant.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 21, 2007.

P.C.

. Heard the learned counsel for the applicant.

This is an application seeking special leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai in C.C.No.1054/S/2002.

. Cheques bearing nos.091480 and 901479 of Rs.1,00,000/- and Rs.1,07,240/- respectively issued by the accused were dishonoured on account of "Insufficient funds" in the Bank account of the accused. The complainant had issued the statutory notice and there was no response as alleged by the complainant. Before the trial Court though the accused did not engage any lawyer, he cross-examined

the complainant and brought out the following admissions:

(a) the complainant did not mention that the cheques were given by the accused for the goods sold.

(b) He did not mention in the complaint the history of the transaction.

(c) He only pleaded that the accused issued two cheques for discharge of his debt or liability.

. While in the witness box the complainant could not explain in what transaction the liability arose. Even in the demand notice at Exhibit 9 he had stated that he had sold and supplied cloth pieces / goods to the accused and in consideration thereof in discharge of the debt the accused had issued cheques in the name of his firm viz. P.Nitin & Company. The complainant had brought on record three invoices but all these documents did not find place in the complaint. The complainant could not prove the bills.

. A copy of the complaint is annexed to the appeal memo and the findings of the trial Court are right that in the complaint there was no mention of the transaction against which the debt was created. The complaint did not say whether the money was to be recovered by the complainant by way of loan recovery or by way of business transaction having sold certain goods. The trial Court, therefore, held that the complainant could not prove his case that the dishonoured cheques were issued against debt or any legally enforceable liability and that the accused had rebutted the presumptions by cross-examining the complainant. The learned counsel for the applicant relied upon the decision in the case of K.N. Beena vs. Muniyappan & anr. **[2002 (1) Civil Law Journal 1 (SC) 699]**. Para 6 of the said decision reads as under:

> "In our view the impugned judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burden or proving consideration for a dishonored cheque is on the complainant. It appears that the learned Judge, had lost sight of Sections 118

> and 139 of the Negotiable Instruments Act. Under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16 has also taken an identical view."

. In the instant case the accused had discharged his burden and proved by cross-examination of the complainant that the complainant could not prove his case regarding the debt or any other legally enforceable monetary liability.

. Hence, there is no case made out for reconsideration of the reasoning set out by the trial Court in support of the acquittal order and consequently leave is refused.

(B.H.MARL